

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/26/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-003137

FILED: _____

JEAN DEAYPEN, et al.

ANDREW M HULL

v.

SHARLENE HOWSER

SHARLENE HOWSER
20356 N 52ND AVE
GLENDALE AZ 85308-0000

NORTH VALLEY JUSTICE COURT
REMAND DESK CV-CCC

MINUTE ENTRY

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124 (A).

This matter has been under advisement and the Court has considered and reviewed the exhibits made of record and the Memoranda submitted.

On December 5th 2001, appellees, Jean & Laurie Deaypen c/o Ultimate Property Management, commenced this action in the North Valley Justice Court seeking judgment against appellant, Sharlene Howser for nonpayment of rent under A.R.S. § 33-1377. Appellant counterclaimed, alleging several violations of the Arizona Residential Landlord and Tenant Act. This case proceeded to trial on December 13, 2001. The North Valley Justice Court ruled in favor of Appellees and dismissed Appellant's counterclaim with prejudice. Judgment was rendered

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against Appellant in the amount of \$5,718.95, and immediate possession of the premises was ordered. Appellant filed a timely notice of appeal.

This appeal is governed by the Arizona Superior Court Rules of Appellate Procedure. Rule 1(b) of these rules mandates that all appeals from a justice court be based on the record from that court. The rule further provides that any party who had an opportunity to request production of a verbatim record of the justice court proceedings, but failed to do so, shall not be granted a trial de novo. Furthermore, requisite fees for copying and certifying the record must be borne by the appellant. Rule 11(a)(2), Arizona Superior Court Rules of Appellate Procedure - Civil.

This Court has full authority to decide all questions of law and fact. Rule 18(b), Arizona Superior Court Rules of Appellate Procedure - Civil. Appellant has the burden of showing that error was committed by the justice court. Failure by the appellant to sustain this burden will result in affirmation of the judgment of the justice court. General Elec. Capital Corp. v. Osterkamp, 172 Ariz. 191, 836 P.2d 404, (1992); Lawrence v. VNB, 12 Ariz. App. 51, 467 P.2d 763 (1970); Paul Schoonover, Inc. v. Ram Construction, Inc., 129 Ariz. 204, 630 P.2d 27 (1981).

This Court may only consider those matters in the record before it when reviewing the actions of the justice court. Therefore, missing portions of an incomplete record presented to this Court are presumed to be in support of the ruling of the justice court. National Advertising Co. v. Arizona Dept of Transp., 126 Ariz. 542, 544, 617 P.2d 50, 52 (App.1980). In addition, this Court will review the evidence in the light most favorable to sustaining the judgment of the justice court. Downs v. Shouse, 18 Ariz. App. 225, 501 P.2d 401 (1972).

Appellant claims she is justified in refusing to pay rent due to various statutory violations of the Arizona Residential

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Landlord and Tenant Act, such as unlawful entry and retaliation. However, appellant fails to provide a sufficient record necessary to support her claims. First, no record of the justice court proceedings was ever submitted to this Court. The March 15, 2002 minute entry clearly established that it was the duty of the parties to order the preparation of the justice court record via payment of any requisite fees. Second, the trial exhibits submitted to this Court firmly establish a breach of contract by the appellant for the nonpayment of rent. The special detainer action filed by the appellee under A.R.S. 33-1377 was warranted in this case. Third, concerning her counterclaim, appellant makes the same allegations she made in the justice court, but fails to provide this Court with any support from the lower court's record regarding her claims. Based upon the record before this Court, appellant has not provided any factual basis to substantiate her claims on appeal. She has not met her burden of showing that the justice court committed any error.

This court finds that the undisputed facts and law in this case provide sufficient and tenable grounds for the justice court's decision in favor of appellees. Furthermore, the parties are not entitled to a trial de novo because no justice court record was produced after having the opportunity to do so.

IT IS THEREFORE ORDERED affirming the order and judgment of the North Valley Justice Court in this case.

IT IS FURTHER ORDERED remanding this case for all further and future proceedings to the North Valley Justice Court.

IT IS FURTHER ORDERED that counsel for appellees submit its Application and Affidavit for attorney's fees and costs on appeal, with a proposed form of order to this court (and a copy to appellant) by August 5, 2002.